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LAW REPORTS*

VIII. ENGLISH REPORTS.

The Reports since the accession of George III have a much more systematised and uniform character than those before that date. Of these, we have already dealt with Burrow's Reports. The next in order of time is Douglas' Reports (1778-1784). The last two volumes in this series were published by Frere and Roscoe, Mr. Douglas having abandoned his original design. Durnford and East (1785-1800) began the practice of reporting cases term by term and hence their reports came to be known as Term Reports. Till then, Reports used to be published long after the decisions were pronounced—as we saw in the case of Lord Hardwicke—long after the Judge had ceased to preside over the Court, in some earlier instances, even long after the lifetime of the Judge and the Reporter. The Reports also are fuller. The Reporters are no longer content with saying—it was decreed—it was declared and so forth ; they give the judgments more or less in the language of the Judges with reasons. Altogether, the Reports exhibit greater care, accuracy and finish, including propriety of style. They are equally distinguished by the terseness and the accuracy with which the points decided are brought out in the headnote. The references to the cases cited seem to have been verified with the greatest care.

These two series cover the period of Lord Kenyon's Chief Justiceship. We have already had occasion to refer to him when dealing with the life of Lord Mansfield. He was a great master of Common Law, though his Latin was, according to Lord Campbell, execrable; it seems he had a number of Latin maxims which he let off—mostly wrongly—so that Lord

*The eighth of a series of lectures arranged by the University of Madras delivered by Mr. B. Sitarama Rao, Vakil, High Court.

Lyndhurst is reported to have told him once to give up his bad Latin, and stick to his good English Law.

Lord Kenyon was succeeded by Lord Ellenborough who was Chief Justice from 1802 to 1817. His judgments sitting in *bank* are reported in East's Term Reports and in Maule and Selwyn. Among his Puisnes were Abbot, subsequently Chief Justice, Holroyd, Bayley (well versed in pleadings) and Leblanc, all eminent Judges. When the last Judge died, the reporter notes *"Illo nemo neque integrior erat in curtate neque sanctior"* (5 Maule and Selwyn, page 1). Lord Ellenborough's *nisi prius* judgments are reported by Campbell who claims credit for giving him reputation for correct decision by a judicious omission of all bad decisions. His dictum notwithstanding, Lord Ellenborough was a quick and accurate Judge. His manner was apparently rough. At any rate Lord Campbell says he was terribly afraid of him. He was against all reform of criminal law and opposed the measure introduced by Sir Samuel Romilly to substitute transportation for death sentence hitherto inflicted in the case of offences of stealing up to five shillings and the reason given by him was that if that one change was allowed, other changes might follow in its wake—which might be disastrous.

Next come Barnewall and Alderson's Reports which cover the period 1817-1822 when Alderson became Judge—Alderson, J., finally Baron Alderson. Then, a fresh series was started by Barnewall and Cresswell which continued till 1830 when Cresswell became Judge and his place was taken by Adolphus and we have the series Barnewall and Adolphus. This series continued till 1834. In 2 Barnewall & Alderson we get to Abbot, C. J., who was already puisne for some years. It is said of him by Lord Campbell, that though poor as an advocate, his powers expanded as he was elevated and he became one of the best Judges—an opinion shared in by Pollock, C. B., in *Pearce* v. *Brookes*, where he says " though not distinguished as an advocate nor at first eminent as a Judge (he) was one than whom few have adorned the Bench with clearer views or more accurate minds or have produced more beneficial results in the law." (L.R. 2 Ex. 213, 317, 318). In 6 Barnewall & Cresswell we get to Lord Tenterden who succeeded Abbot as Chief Justice of the King's Bench. He was the son of a barber and ended life as Chief Justice. Denman became Chief Justice in 1832 on the death of Lord Tenterden. His puisnes were

Littledale, Parke, Patteson and Taunton. The first had become Judge in 1824, and is characterised by Lord Campbell as the "most acute, learned and simple-minded of mankind" —a thorough lawyer but an infant in the ways of the world taking little interest in anything beyond the narrow range of his profession. He continued Judge till 1841. Parke, J. became Judge in 1828. In 3 Barn. & Adolphus you will find his name for the first time. He became a Baron of Exchequer in 1834 and continued in that capacity till 1856 when he was made a life-peer under the name of Lord Wensleydale. He was the first life-peer to be created. He was a Judge of great ability whose only fault, it is said, was over-subtlety, leading at times to the sacrifice of substance to forms of pleading. His judgments in the Exchequer Court are reported in the many volumes of Meeson and Welsby. Patteson was Judge from 1830 to 1852 and was well thought of as a Judge. Taunton was a reporter of the Common Pleas and became Judge in 1832. He was a learned lawyer but died early (1835). Till Lyndhurst, Parke and Alderson went to the Exchequer Court, it was a comparatively inefficient Court and work concentrated mainly in the King's Bench and so, Denman had constantly to be fighting as he said "the gigantic monster called Arrear". His manner to the bar was pleasant and formed a great contrast apparently to that of Lord Kenyon and Lord Ellenborough. Williams, J. died in 1846 and was succeeded by Erle who was already a Judge of the Common Pleas, and continued as a Judge of the Queen's Bench for 13 years when he became Chief Justice of the Common Pleas in which capacity he continued till 1866. He was one of the most eminent Judges that ever sat there, combining learning, diligence, patience and courage: Coleridge became Judge in 1835 and continued till 1858. His summing up to the jury, it is said, was always a pleasure to hear. He had a very good English style and was a classical scholar besides. Denman continued Chief Justice till 1850 when he resigned owing to ill-health and Lord Campbell took his place. The period of Lord Denman is covered by Barnewall and Adolphus (1830-1834), Adolphus and Ellis (1830-1834) and the first fourteen volumes of Queen's Bench new series.

Lord Campbell's judgments are to be found in Adolphus and Ellis (N.S.), Vols. 15 to 18 and Ellis and Blackburn, Vols. 1 to 9. The Reports of Ellis and Blackburn are distinguished for the care and success with which extraneous matter is stripped off and the essence of the case is

presented. Brevity is achieved without obscurity. We find some of his judgments even in Ellis, Blackburn and Ellis (1858) and Ellis and Ellis (1858-1860). When he was appointed in 1850, he says, he read up all the Reports from 1842 to 1849 to prevent any important reported decision being sprung upon him as a surprise. He went through a similar process as to Equity decisions when later on he became Lord Chancellor. As an advocate, he seems to have been somewhat unscrupulous, being in the habit of mis-stating a date or slurring over a fact when it suited his purpose to do so and the habit seems to have pursued him even in summing up to the jury whom he wanted to persuade by every means to take his view of the facts. As a Common Law Judge, he was everything that could be desired. His tenure of office as Lord Chancellor was much too short for him to achieve any great reputation nor were his equipments such as to bring him that reputation. He himself had no hope of being quoted as a great Equity authority, his ambition being not to tarnish his Common Law reputation.

Lord Campbell was succeeded by Cockburn in 1858. He was Chief Justice of the Common Pleas for some time, having been appointed to that office in 1856. Cockburn has a distinguished place in the roll of Chief Justices though he did not come up to the full level of expectations raised by his eminence as an advocate. Cockburn goes over the period we have set to ourselves for to-day, that is, 1866. He was the first Lord Chief Justice under the Judicature Act. He tried the famous *Tichborne case*. He was a conservative lawyer—he protested against Judges being appointed to try Election Petitions—his ground being that Judges will be contaminated by contact with politics. Neither could he reconcile himself to the Judicature Act. As Attorney-General he combated the opinion expressed by Brougham that an Advocate in the discharge of his duty knew only his client with the famous phrase "that the weapon of the Advocate was the sword of the soldier, not the dagger of the assassin". No Judge was more dignified than Cockburn on the Bench. His contributions to the law of the country are not very substantial. Such as they were, he has the credit of having shaped the law of libel in regard to the press in *Wason* v. *Walter*, *Campbell* v. *Spottiswoode* and *Seymour* v. *Butterworth*. In the Jamaica case, he laid down the limits of martial law and this was his greatest contribution to the cause of personal liberty. For clearness

of expression and closeness of reasoning, his judgment in the *Franconia case* in which he held with the majority, that the English Courts had no territorial jurisdiction outside the low water-mark on the sea is a good example of his style. His technical knowledge was somewhat defective but this defect was made up by Blackburn whom he had as a colleague almost from the very beginning. Blackburn was practically unknown at the time of his appointment but his judicial career showed what profound lawyer he was and in point of erudition there is hardly any Judge whose reputation stands higher than that of Blackburn. "It used to be said," says Lord Campbell, "that there were four ways in which men could get on in the profession, (*i*) by huggery, (*ii*) by writing a law-book, (*iii*) by appearing at the Quarter Sessions, and (*iv*) by a miracle." By huggery was meant making friends with the attorneys and by giving dinners to them—of course, not forgetting their clerks who would be given suppers. As an instance of people becoming famous by writing a law book and thus becoming Judges used to be given Alan Parke, J. who was the author of a book on Insurance. Perhaps Blackburn also was an instance in point as Lord Lindley was slightly later. Lord Campbell himself improved his fortunes considerably by marrying the daughter of Abinger.

For a part of the same period we have another series, Dowling & Ryland (1821-1827), Manning & Ryland (1827-1830), Neville & Manning (1831-1836), Neville & Perry (1836-1838), Perry & Davison (1841-1843) and Davison and Merivale (1843-1844). There are other series for shorter periods still. Harrison & Wollaston (1835-1836), Willmore, Wollaston and Davison (1837), Willmore, Wollaston & Hodges (1838-1839) and Arnold & Hodges (1840-1841). All these Reports were confined exclusively to cases before the King's Bench including decisions on Error before the Exchequer Chamber or the House of Lords arising therefrom. Before the time we are dealing with, it was quite in the ordinary course that the same Report dealt with all the Courts of Common Law. It is quite exceptional to find a Report dealing only with one Court. Even if it did largely deal with cases of one Court, say the King's Bench, there would be some cases at least, from the Common Pleas or the Exchequer Court. During this period you find reporters confining themselves exclusively to one Court. We find further specialisation such as Bail Court, Nisi Prius and Crown Cases. What is meant by a Bail Court or by Nisi Prius, we

have already explained. The Bail Court Reports begin with Chitty (1819-1820) though it does not confine itself exclusively to them. Some judgments of Lord Mansfield between 1780 and 1787 also are to be found in this Report. Dowling (1830-1840), Dowling N. S. (1841-1842), Dowling & Lowndes (1843-1849), Lowndes, Maxwell & Pollock (1850-1851), Bail Court Cases (Lowndes and Maxwell alone) (1851-1854) are other Reports that report Bail Court Cases. Saunders & Cole's Bail Court Reports deal with the period 1846 to 1848.

For Crown cases you start with Russel & Ryan (1799-1823). Levin's Crown Cases on the Northern Circuit (1822-1838) contain more amusing matter than any other law book. We have such amazing marginal notes as "possession in Scotland is evidence of stealing in England." Davison (sometimes cited as Davison & Pearce) deals with the period 1844-1852, Dearsley from 1852 to 1856, Dearsley & Bell from 1856 to 1858, Bell from 1858 to 1860 and Leigh & Cave from 1861 to 1865. Cox's Criminal Cases begin in 1843 and go over the period we are dealing with. Temple & Mew's Criminal Appeal Cases (1845-1851) are valuable Criminal Reports.

Before the time of Lord Campbell, *nisi prius* decisions were not regularly reported though some decisions of Holt and Lee are found in Lord Raymond's Reports and Strange and some decisions of Lord Kenyon in Peake & Espinasse. The peculiar circumstances of the time and the rapidity with which Lord Ellenborough decided cases brought in so much work and raised so many interesting points that it was found profitable to report the *nisi prius* decisions separately. The value of these *nisi prius* decisions is thus stated by Carrington in his preface to his Reports. He says: "If a case has to be tried which is difficult in its nature or in the evidence to be given on it, the greatest favour is to put a *nisi prius* report of a nearly similar case which will show him (counsel) what evidence to give, what objections to anticipate and so forth." He meets the charge that the decisions are those given in the hurry of *nisi prius* and as such valueless by saying that he has also noted wherever those decisions have been varied in *bank* or in error by reporting those judgments also. Points of evidence, *onus probandi*, etc., are generally be found decided only here; these hardly ever were decided in *bank*. Peake's Cases have the reputation of being correct Reports. The same, however, cannot be said of

Espinasse (1793-1807). In 13 Q. B. Cases 844, ***Small*** v. *Nairne*, Lord Denman said: "I am tempted to remark for the benefit of the profession that Espinasse's Reports, in days nearer their own time, when that want of accuracy was better known than it is now, were never quoted without doubt and hesitation and a special reason was often given as an apology for citing that particular case. Now, they are often cited as if counsel thought them of equal authority with Lord Coke's Reports." It used to be said jocularly of Espinasse that he heard half and reported the rest. Lord Campbell's Reports (1808-1816) stand on a different footing. They are models of correctness and propriety of selection and have always been held in great repute. Lord Cranworth said of them in *Williams* v. *Bailey*, "On all occasions, I have found in looking at the Reports of the late Lord Campbell of Lord Ellenborough's decisions that they really do in the fewest possible words often lay down the law even more distinctly and accurately than is to be found in more lengthened reports and what is so laid down has been subsequently recognised as giving the true view of the law as applied to the facts of the case." But the very brevity has called forth some adverse comments also and so Maule, J. is found saying that a particular decision "is very shortly reported and we have frequently found, in referring to the attorneys, whose names are mentioned by the reporter at the end of the cases (the practice was begun by Lord Campbell) that the real circumstances of the case explain the apparent anomaly of the decision." Short statements are pleasing when a general idea only is desired but for a Judge or lawyer who wants to see how far a decision affords a precedent, brevity is far from being welcome and one would very much like to have not only the outline but also the filling in. Holt (1815-1817), Starkie (1815-1822), Gow (1818-1820), Dowling and Ryland (1822-1823), Ryan and Moody (1823-1826), Moody and Malkyn (1827-1830), Moody and Robinson (1831-1844), Carrington and Payne (1823-1841), Carrington and Marshman (1840-1842), Carrington and Kirwan (1843-1850), Foster and Finlason (1858-1865) with some gaps give us the *nisi prius* decisions of this period. Carrington and Payne also have not much of a reputation. Blackburn, for instance, said of Carrington and of Espinasse "neither reporter has such a character for intelligence and accuracy as to make it at all certain that the facts are correctly stated or that the opinion of the Judge was rightly understood." 8 Best and Smith 401—*Redhead* v. *Midland Company*.

The Chief Justices of the Common Pleas during the period we are dealing with are Lord Kenyon, Dallas, Giffard, Best, Tindal, Cockburn and Erle. Kenyon became Chief Justice of the King's Bench early and has been noticed in connection with the King's Bench Reports. So also Cockburn. Giffard became Master of the Rolls in 1825. His name is familiar to us for his dictum that on questions of Hindu Law, the British Court should decide as a Hindu Court of Justice would have done. Referring to Tindal, C. J., Lord Macnaughten says that there is no higher authority on the subject of agreements in restraint of trade than him. (1894) A. C. 553. We may notice here two of the puisne Judges of the Common Pleas who are also well known. One is Willes who is familiar to us as the Judge who delivered judgment in the Tagore case and by the respectful reference made to him by Pollock. ' He was reputed to be the most learned Judge of his day, his only rival in the claim being Blackburn. There was an impression that he would lead an argument in such a direction that he might carefully throw out a reference to *Bracton* or the *Mirror*. He would oftentimes crush the argument of many an ardent counsel by saying that the point had been decided the other way in the 15th century as reported in the Year Books. He is said to have set up the practice of half-night reading with wet towels round the head to keep himself awake—a course suggested by Lord Hale. Early morning in his constitutional, he used to meet Smith, an equally learned man, the author of the leading cases of which he became with Keating, an Irish importation like himself or Campbell before him, an Editor. Willes sat on the Law Procedure Commission and his recommendations became law. He was a great special pleader. The rules of pleading of the time made the unfortunate client the sport of lawyers and Willes revelled in them. By substituting the new system of the Common Law Procedure Acts his occupation was gone and as a compensation he was given a Judgeship in Common Pleas while yet 41 in 1855. Bramwell was his colleague in drafting the new rules of practice which governed the Courts of England till the Judicature Act was passed. His unrivalled reputation for learning, his freedom from prejudice and his logical force render his decisions in all branches of law respected and seldom questioned. One of his decisions, *Indermaur* v. *Dames* is the leading decision in tort on the doctrine of *trap*. His decision in *Tagore* v. *Tagore*—though not an unmixed good—is un-

doubtedly a remarkable judgment. Byles, the author of Byles on Bills, is even as a Judge an authority on that branch of law. When at the Bar, he was famed for his skill in the manœuvres which the rules of pleading permitted. One judgment of his might well be referred to here *Charlton* v. *Lings*. The question was as to whether under the Representation of the People, Act, 1867, which conferred the franchise "on every man" women also were entitled to come in. "No doubt," he says, "the word 'man' in a scientific treatise on Zoology or fossil organic remains would include men and women and children as constituting the highest order of vertebrate animals. It is also used in an abstract and general sense in philosophical or religious disquisitions. But in almost every other connection the word 'man' is used in contradistinction to woman. Women for centuries have always been considered legally incapable of voting for members of Parliament as such so as of being themselves elected to serve as members. In addition to all of which, we have the unanimous decision of Scotch Judges and I trust their unanimous decision and our unanimous decision will for ever exercise and lay this ghost of a doubt which ought never to have arisen." But the ghost has arisen and though laid again, it looked for a time that women had succeeded. Witness the recent attempt of women to sit in the House of Lords where they had the support of Lord Haldane and the Attorney-General—now Lord Hewart, C. J.—though the point unarguable in the contrary sense. Bosanquet and Puller (1796-1804) report the decisions of Lord Eldon and Lord Kenyon as Chief Justices of the Common Pleas. Bosanquet and Puller N. S. (1804-1807), Taunton (1807-1879), Broderip and Bingham (1819-1822) and the first vol. of Bingham report the judgments of Dallas, C. J. and Alan Parke, J. The eighth volume of Taunton has not got the same high reputation as the other volumes as the cases were not reported by Taunton himself but were compiled from his notes. (*Per* Parke, B. in *Hadley* v. *Boxendale*). 1 Bingham contains the decisions of Giffard, C. J. who became Master of the Rolls in 1825. The judgments of Best, C. J. are reported in Vols. 4 and 5 of Bingham. In 6 Bingham we come to Tindal, C. J. In 1835 the sergeants ceased to have the monopoly of the Court of Common Pleas and Bingham began his new cases which continued up to 1840. Manning and Granger continue the Reports up to 1844. The Common Bench Reports (1845-1856), the new series (1856-

1865) and Harrison and Rutherford (1865-1866) bring us up to the Law Reports. Another series dealing with the Common Pleas cases are Marshall (1814-1816), Marshall and Moore (1817-1827), Moore and Payne (1828-1831), Moore and Scott (1831-1834), Scott's New Reports (1840-1845), Hodges (1835-1837), Arnold (1838-1839) and Drinkwater (1840-1841). Scott's New Reports are satisfactory for consultation but there is too much of expansion and repetition.

SUMMARY OF ENGLISH CASES.

COMMISSIONERS OF INLAND REVENUE *v.* BRIGADIER-GENERAL D'EWES COKE, (1926) 2 K B 246: 95 L J K B 694.

Income-tax —Super-tax —Company —Shareholders — Offer of new fully paid-up shares—Option to receive nominal value—Accumulated profits—Distribution of—Capital or income—Liability to tax.

A limited company decided to distribute among its shareholders a sum of £90,000 standing to the credit of its reserve fund as representing undivided profits. Resolutions were passed creating 90,000 new fully paid-up £1 shares, which were offered to the shareholders in proportion to their existing shares; an option was also given to the shareholders to accept the new shares or their money equivalent. One of the shareholders accepted some new shares and exercised the option to receive the money equivalent of the remainder of the shares allotted to him and the question arose of his liability to pay super-tax in respect of the whole allotment. *Held*, by *Rowlatt, J.*, the shares or the money equivalent thereof represented income and not capital and supertax was payable in respect thereof. (1921) 2 A. C. 171 and (1926) A. C. 395 distinguished.

GODMAN *v.* TIMES PUBLISHING CO. LTD., (1926) 2 K.B. 273: 95 L J K B 747.

Libel—Justification—Plea of—Conspiracy to defraud—Specific charge raised—Particulars referring to other fraudulent acts—Practice.

In a libel action the plaintiff complained of a paragraph in a newspaper charging him with having fraudulently entered into a conspiracy to defraud the underwriters of a ship V. The defence was one of justification and in the particulars of

justification, the defendants referred to matters relating to two other vessels in respect of which also the plaintiff was alleged to have conspired to defraud the underwriters. An application was taken out to have those particulars relating to other vessels struck out as irrelevant. *Held,* the relevancy of those particulars could be gone into only at the trial of the case, and the particulars should not be ordered to be struck out at an interlocutory stage.

The scope of particulars of justification in a libel action considered.

BETTS *v.* CLARE AND HEYWORTH, (1926) 2 K B 289: 95 L J K B 872.

Income-tax—Company—Profits—Mode of ascertaining—Three years' period not available for average—Broken period—Income-tax Act, 1918, *Sch. D, Cases* I & II.

A firm began to do business for the first time on 1st March, 1919, and made up its accounts up to 31st Dec. 1919, showing a total profit of £1,000. Thereafter the business was sold *en bloc* to a company consisting of the same persons as from 1st Jan. 1920 and the accounts of this company for the 3 months ending with 31st March, 1920 showed a profit of £12,150. For the purpose of assessing it to income-tax for the year ending 5th April, 1920, the question arose whether it should be on the basis of the profits of the 10 months period ending with 31st December, 1919 or on the basis of the profits of 13 months ending with 31st March, 1920. *Held,* by a majority of the Court of Appeal (*Scrutton, L. J.* dissenting) as the three years' period for calculating the average was impossible in the case, the average should be taken to be twelve-thirteenths of the total profits made between March 1, 1919 and March 31, 1920. Decision of *Rowlatt, J.* in (1925) 2 K B 402 reversed.

NEWMAN *v.* SLADE, (1926) 2 K B 328: 95 L J K B 894.

Landlord and tenant—Weekly tenancy—Notice to quit—Period of—Calculation.

In the case of a tenancy from week to week, unless a contrary intention appears, either party can determine it by a week's notice. A notice given on the day of the week corresponding to that on which the tenancy commenced and expiring on the corresponding day of the following week is good. It need not be one of seven clear days.

NOBLE *v.* HARRISON, (1926) 2 K B 332: 95 L J K B 813.

Nuisance—Highway—Branch of tree overhanging—Fall of branch—Passing vehicle damaged—Liability of owner of tree.

A branch of a tree growing on the land of the defendant overhung a highway at a height of thirty feet above the ground. It was found as a fact that owing to a latent defect which was not discoverable by any reasonable inspection, the branch broke and fell down causing damage to the plaintiff's vehicle as it passed along the highway. In an action for damages, *held,* (1) the principle enunciated in *Rylands* v. *Fletcher* would not apply and make the defendant liable, as the tree is not a dangerous thing which every owner grows at his risk and peril; and (2) nor was the branch a nuisance as it was at such a height that it did not obstruct traffic on the highway and the defendant did not and could not have known of the actual danger.

In re SCHINTZ : SCHINTZ *v.* WARR, (1926) 1 Ch. 710: 95 L. J. Ch. 393.

Practice—Company established abroad—Service of notice out of jurisdiction—Necessary or proper party—Clause in the Articles of Association for decision of disputes before a particular tribunal—Breach of trust by co-trustees—Action for removal and damages—Validity of resolution challenged—Foreign Company if a proper party.

The Articles of Association of a Company established in France provided that all disputes relating to the affairs of the Company were to be decided by a particular French tribunal. The plaintiff, one of several trustees under a settlement comprising a large number of shares in the French Company and also a beneficiary thereunder, sued her co-trustees for breach of trust, in that the latter voted without her consent in favour of a resolution of the French Company to capitalize part of the reserve fund, claiming removal of the co-trustees and damages against them. One of the reliefs claimed was a declaration that the said resolution was invalid and for that purpose the Company was impleaded as a defendant, and permission was asked for to serve the writ out of the jurisdiction. *Held,* by the Court of Appeal reversing the orders of *Astbury, J.* and *Lawrence, J.* that the action being mainly based on breach of trust, the validity of the resolution was only a subsidiary issue ; and the Articles of Association having fixed

upon a French Tribunal as the *forum conveniens*, a decision of the English Courts on the validity of the resolution would not be final; the Company was neither a necessary nor a proper party to the action and leave to serve the writ out of jurisdiction should not be granted.

Considerations before giving leave to serve a writ out of jurisdiction discussed.

DUKE OF SUTHERLAND *v.* BRITISH DOMINIONS LAND SETTLEMENT CORPORATION, LTD., (1926) 1 Ch. 746.

Practice—Interrogatories—When to be granted.

The administering of interrogatories is a step more often desirable than undesirable and to be encouraged rather than to be discouraged, because they not infrequently bring an action to an end at an earlier stage than otherwise would be the case. A party has a right to interrogate with a view of obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. Discovery is not limited to giving the plaintiff a knowledge of that which he does not already know but includes the getting an admission of anything which he has to prove on any issue which is raised between him and the defendant. The Court will exercise a discretion in refusing to enforce it, where it is remote in its bearings upon the real point in issue and would be an oppressive inquisition.

ALBISON *v.* NEWROYD MILL, LTD., 95 L.J.K.B. 667.

Workmen's compensation—Accident of trivial nature—Notice given some weeks later—Reasonable cause for delay—"As soon as practicable"—Meaning of.

A girl of fifteen working in a cotton factory was injured by a bobbin falling on her nose. There was some bleeding and the girl went to her immediate superior, who wiped it. Two days later, as there was swelling, poultice was applied by her mother and as the nose was still getting worse, the girl went to a doctor seven weeks after the accident ; he found it septic and then gave her the necessary treatment. It was only then that she gave notice to her employers of the accident and later claimed compensation. *Held*, by the Court of Appeal (*Pollock, M. R.* dissenting) notice need be given only when the workman realises he has suffered an injury entitling him to compensation and under the circumstance of the case, the mere fact that notices were put up in the factory enjoining workmen to give notice of even the slightest accident does not disentitle the claimant to compensation.

GREENHILL *v.* FEDERAL INSURANCE CO., 95 L. J. K. B. 717.

Marine insurance—Goods shipped—Pre-carriage and damage—Facts not disclosed—Materiality of.

In an action on a marine insurance policy when the defence is wrongful concealment of material facts, the defendants have to prove a wrongful concealment of a fact then known to the plaintiffs and material to be known to the defendants and material to the risk of the said policy. A person tendering cargo for insurance is under a duty to disclose to the underwriters the condition of the cargo, and if the insurance effected without disclosing the fact of a pre-carriage and damage caused by exposure to serve weather, the policy is vitiated. *Boyd* v. *Dubois,* 3 Camp. 133 dissented from.

FIELD *v.* CURRICK, 95 L. J. K. B. 756: (1926) 2 K. B. 374.

Landlord and tenant—Covenant to repair—Extent of—Buildings put later.

If a lessor demises a house and there is an express covenant to repair, the lessee is bound by it. A general covenant to repair includes not merely buildings existing when the demise is made but all those which may be erected during the term. If however the covenant to repair is only one to keep in repair the demised premises, it applies to those existing at the date of the lease only, unless the new buildings are made part of the old ones.

GUEST *v.* T. GASTON & CO., 95 L. J. K. B. 759.

Workmen's compensation—Arising out of and in the course of employment—Attempting to board a tramcar while in motion—Act forbidden—Death by accident—Workmen's Compensation Act, 1923, *S.* 7.

A person who had been employed to supervise the weighing of cotton at various warehouses in Liverpool was allowed to use the tramcars to go from one place to another. One day while attempting to board a tramcar in motion, in contravention of the tramway rules, on his way to the head office from a warehouse, the man fell down and was killed. *Held,* the mere fact of his attempting to get into a tram in motion, contrary to the rules, does not mean that the accident did not arise out of and in the course of employment. Scope of S. 7 of the Workmen's Compensation Act, 1923, referred to.

HINES *v.* TOUSLEY, 95 L. J. K. B. 773.

Workmen's compensation—Collision with dog—Injury—Compensation awarded against employer—Right to claim indemnity against owner.

A waitress while coming downstairs in the course of her employment collided with a dog and fell down breaking her leg. She applied for compensation as against her employer, whereupon the latter joined the owner of the dog as a third party and claimed an indemnity against him. *Held,* in the absence of anything to show that the dog was vicious, and not well-behaved, the owner is not liable.

UNITED STATES SHIPPING BOARD *v.* FRANK STRICK & Co., 95 L. J. K. B. 776 : (1926) A. C. 545.

Shipping—Charterparty—Construction—Cargo to be loaded on notice of readiness to load—Turn to load—Delay in—Demurrage—Claim for.

The terms of a charterparty provided for loading cargo " subject to port regulations in regular turn as customary.... ....commencing when written notice is given of steamer being ready to load. " There being only one berth, steamers were berthed in the order of arrival and had to await their turn. The steamer arrived at port on 30th July, 1920, and the next day the master gave the written notice of readiness to load, but her turn to the berth came only on 26th August, 1920. In an action for demurrage for the period of detention, *held* by a majority of the House of Lords (*Lord Sumner* and *Viscount Haldane* dissenting) the obligation to load came into force only when the ship's turn to load arrived and hence no demurrage was payable.

REED *v.* SEYMOUR, 95 L. J. K. B. 796.

Income-tax—Benefit match for professional cricketeer—If assessable—Gate money—Nature of.

The gate moneys received during a benefit match held by the Kent County Club for the benefit of a professional cricketeer were under the rules retained by the Committee and invested for his benefit. On retiring from the profession the money used to be utilised in purchasing a farm for him. On a question arising whether the same was assessable to income-tax, *held,* by a majority of the Court of Appeal (*Sargant, L. J.* dissenting) the gate money was received in respect of employment and as it represented profits of office, it was taxable. Decision of *Rowlatt, J.* in (1926) 1 K. B. 588 reversed.

THOMAS *v.* TODD, 95 L. J. K. B. 888.

Company—Receiver—Voluntary liquidation—Effect of—Receiver personally liable on subsequent contracts.

After a company went into voluntary liquidation, a Receiver who had been previously appointed by a debenture-holder entered into a contract to continue the services of some musicians as before. *Held,* he could no longer bind the company, but was personally liable on the contract.

JOTTINGS AND CUTTINGS.

The Late Sir John Edge.—The death of Sir John Edge at the advanced age of eighty-five has followed rapidly upon his resignation of his seat on the Judicial Committee last May. Sir John had been a member of the final Court of Appeal for the Empire for nearly eighteen years, having been appointed in 1909, when already sixty-eight years of age. It is an open secret that for a decade or more after his appointment most judgments of Indian Appeals were either drafted by him or submitted to him for revision ; the somewhat over-elaborate reference to authorities which mark these judgments is generally understood to have been a token of the remarkable conscientiousness and meticulous care with which he attacked this important task. Sir John was a member first of the Irish and afterwards of the English Bar ; but it was as Judge of the High Court of Allahabad in India, to which he was appointed in 1886, that he first attracted the attention of jurists. It soon became known that the Indian Bench had produced a really great Judge ; he earned in India a celebrity not unlike that of Mr. Justice McCardie in England ; and like all Indian and Colonial Judges of the first order, he soon became known in the spirit and the records of cases to practitioners at the Privy Council Bar. Sir John Edge was the most versatile of men ; while a Judge, he actually served as Commanding Officer of the Allahabad Volunteer Rifles, and as Vice-Chancellor of Allahabad University. On his return to England, he enjoyed the remarkable honour, unique, we believe, in the case of ex-Judges who have not also been Indian Civil Servants, of being appointed one of the Council of India, upon which he served until his appointment to the Judicial Committee. While his love of exactitude and his tendency to be critical made argument before him a somewhat strenuous task, his ever-flowing courtesy and his unaffected kindness earned him universal esteem both in India and in England.

—*The Law Journal,* August 14, 1926, p. 116.

Baldness and Legal Wigs.—The British Association, in its Anthropological Section, discussed learnedly last week a scientific problem of some practical interest to the average legal practitioner who has to wear a wig in Court. That problem was the cause of baldness, said to be on the increase. Professor Fleure explained it as due to increased brain-energy, on the ground that hair-growth absorbs a great deal of organic power which, in the bald man, is utilised physiologically for the development of brain-cells. But we find it difficult to reconcile that theory with the fact that Common Law barristers are usually balder than their Chancery brethren, and that both have luxuriant hair than conveyancers—a fact of which any observant person can easily satisfy himself. Our own view is rather the commonplace one that the wearing of the wig by the Court practitioner is deleterious to the growth of hair; this accounts for the comparative immunity of the conveyancer from baldness. *A propos* of wigs, perhaps some readers of Walter Scott will recall how, in "The Antiquary," an old barber explains the revolutionary tendencies of his age by the obsolescence of the practice of wearing wigs amongst gentlemen. "There are nae mair, than twa Lairds in the parish who wear wigs," he says; "hoo, then, can ye expect the common folks to respect the gentry?"

—*The Law Journal*, August 14, 1926, p. 117.

The Judicial Committee.—The appointment of Lord Sinha to be a member of the Judicial Committee of the Privy Council under S. 1 of the Judicial Committee Act of 1833 is a well-earned mark of recognition of a long period of able and devoted service to the Empire. The section in question, after providing that Privy Councillors, being the holders or past-holders of certain judicial appointments in Great Britain, shall form a committee to be styled the Judicial Committee of the Privy Council, enacts that "any two other persons being Privy Councillors" may from time to time be appointed to be members of the Committee. Lord Sinha has been appointed under this provision, and the fact that the other of the two appointments is held by Lord Oxford and Asquith adds to the honour thereby conferred upon him. The position is purely honorary. Sir John Wallis, who was recently appointed to the same Committee under S. 2 (1) of the Appellate Jurisdiction Act of 1908—also an honorary appointment—has been transferred to fill the vacancy caused by the resignation of the late Sir John Edge. Sir John held one of the appoint-

ments created by S. 30 of the Judicial Committee Act of 1833, by virtue of which a sum of £400 a year is payable to two retired Indian Judges appointed to the Committee, who shall attend its meetings, "as an indemnity for the expense which they may thereby incur". As our readers will remember, the Judicial Committee Bill now before Parliament proposes to repeal S. 30 of the Act of 1833—without prejudice to the rights of persons entitled under it at the passing of the Bill—and to create two new posts, each carrying a salary of £2,000 a year, with the possibility of an addition not exceeding another £2,000 a year out of the revenues of India.

—*The Law Journal*, August 28, 1926, p. 143.

The Adoption of Children.—After many years of effort, a Bill to legalise, in proper cases, the adoption of children, has become law, and will come into operation at the beginning of next year. The Bill was drafted by the Committee appointed by the Home Secretary in 1924, and presided over by Mr. Justice Tomlin. That Committee's reports were fully dealt with in our columns when they were presented, and it is unnecessary for us to do more at the moment than to express the satisfaction which will be felt by all those who have ever been called on to advise persons desiring to adopt a child, that the unsatisfactory and anomalous state of the law on the subject is about to be brought to an end. A little more than a year ago the terms of reference of Mr. Justice Tomlin's Committee were extended to include an enquiry into the working of the provisions of the Children Act, 1908, as to protection of infant life and visitation of voluntary homes. The report of the Committee on this branch of the subject has now been published (Cmd. 2711). This report is divided into two parts, the first dealing with the protection of infant life, with which Part I of the Children Act is concerned, and the second dealing with the inspection of voluntary homes, the subject of S. 25 of the same Act. As to the protection of infant life, the Committee point out that Part I of the Act was intended to be in the nature of a police measure directed to the abolition of "baby farming," and they are satisfied that it has proved efficient in this respect, and that as the mischief aimed at has diminished, the value of the legislation as a welfare measure has come more and more into prominence. They recommend a number of amendments, chiefly of detail, but they are satisfied that there is no need for any marked change in the substance of the law. The chief recommendation in this part of their enquiry is that Poor Law Guardians should cease to be the local autho-

rity for the purpose of Part I of the Act. With regard to the second branch of the subject, the inspection of voluntary homes, the Committee report that the provisions of S. 25 of the Act of 1908 are inadequate, and they recommend that that section be replaced by another, outlined in the report, providing for the furnishing of particulars of voluntary homes as they are founded, giving a comprehensive definition to the word " home, " providing for the visitation and inspection of homes, and giving power, in proper cases, to order the removal of children from homes in which their safety or welfare is endangered.

—*The Law Journal,* August 28, 1926, p. 144.

Justice in Italy.—Whatever views one may hold as to the Fascist system of government, there will be few, if any, British lawyers who will approve of the decision of the Fascist Directorate, reported in the *Times* of Aug. 23, that lawyers in Italy, holding the Fascist ticket, will in future be forbidden to take up the defence of clients who are "anti-Fascist," or who are in conflict with the principles of the Fascist Party, in all cases of a political character. No special ban is made, it is stated, for ordinary cases, but in cases of an "anti-social character" or of "grave immorality," in which anti-Fascists are involved, the Secretary-General of the Fascist Party will use his "discretional judgment" in calling the attention of Fascist lawyers to the political views of their clients. Taken in conjunction with the Decree regulating the position of the Bar in Italy, a brief account of which recently appeared in our pages—61 L J p. 526—it appears to be doubtful whether an anti-Fascist accused of an "anti-social" or "grossly immoral" offence will be able to obtain adequate representation at his trial. We are glad to know that there is no tendency in this country on the part either of the public or of lawyers to consider, in the selection of advisers or in the acceptance of instructions, the political views of either party. Only last week we observed that a miners' leader charged with an offence against the Emergency Regulations was defended by an eminent King's Counsel, lately a well-known Conservative Member of Parliament. Such a fact speaks volumes for the confidence which all classes of the community have in the freedom of the members of our legal profession from political predelictions when engaged in the practice of their profession.

—*The Law Journal,* September 4, 1926, p. 156.

Anonymous Witnesses and their Historical Origin.—In the Bayswater murder case the police have been greatly ham-

pered in their inquiries by the refusal to come forward of the person (presumed to be a woman) who sent to the police an anonymous letter giving information about the crime. Assuming that the letter is not a hoax, or a malicious attempt to fix the crime on an innocent person, or an attempt of the criminal to mislead Scotland Yard, the natural question arises, why has the writer preserved his or her incognito? Fear of revenge by a gang of criminals is a possible explanation; but we fancy there is also another, namely, the dislike of being taken to a police-station and there severely cross-examined for hours, which is too often the fate of persons whose information the police desire. Such persons seem never to be examined in their homes, but nearly always are taken to the police-station. This is done, we understand, because the police believe the awesome character of the place has a good "moral effect" on recalcitrant witnesses who attempt concealment. But this plan defeats its own purpose, since it renders the average timid but respectable citizen very reluctant to come forward at such an unpleasant cost to his nerves and his personal dignity. Until 1875, however, when the practice of committing witnesses to prison between the police proceedings and the trial, unless they could find two householders to go bail for their appearance at the trial, was abandoned in favour of the modern practice of binding over witnesses on their own recognizances to attend the indictment, witnesses for the Crown frequently suffered a very real hardship. Many of them, who could not find bail, were regularly detained in prison until the trial. Absurd as this now seems, it was only abolished in 1875 as the result of the personal intervention of Disraeli at the request of his Whip, Sir William Fraser, who tells the whole story of his successful efforts to secure this reform in one of the most fascinating episodes related in his "Disraeli and His Day".

—*The Law Journal,* September 4, 1926, p. 156.

Sergeant Ballantine's Story of Ben Ahmed.—Apropos of the hardships of Crown witnesses in the days before 1875, Sergeant Ballantine tells in his "Experiences" with all his own inimitable humour the true story of a case which he himself came across. There lived in Clerkenwell an itinerant ice-cream vendor, a Turk named Ben Ahmed. Some miscreants set out to avenge on him the persecution of Christians in Turkey by assaulting him, and robbing him of all his till money in the open street. They were seen, chased, and captured by the police; and in due course a police-magistrate committed them

for trial at Quarter Sessions. They were released on bail and at once absconded. The prosecutor was bound over, too, to give evidence at the trial. But he had no friends whom the police would accept as bail; therefore he was committed to prison pending the trial. The trial, when its time arrived, was adjourned till the next sessions because the defendants did not surrender to their bail. Adjournment followed adjournment for a number of years; meanwhile, poor Ben Ahmed remained in jail. At last the Crown got tired of the affair and entered a *nolle prosequi;* otherwise Ben Ahmed must have remained in jail for the rest of his natural life. Released at last, he came back to Clerkenwell a pauper; a rival had seized his pitch and his poor savings had disappeared on the purchase of prison comforts, such as tobacco and coffee. Unable to earn a living, he was run in for vagrancy, and ultimately deported to Constantinople. There, Sergeant Ballantine ironically suggests, he doubtless became an ardent member of the Progressive party who sought to introduce into Turkey the enlightened criminal jurisprudence of the Western world.

—*The Law Journal,* September 4, 1926, p. 156.

The Disciplinary Powers of the Law Society.—In our last issue we printed a letter from a correspondent calling attention to the recent case in which the suspension, by the Statutory Committee of the Law Society, of a solicitor who had been convicted of an assault, was confirmed by the Court of Appeal. Our correspondent commenced by raising a technical point as to the effect of S. 45 of the Offences against the Person Act, 1861, but the major part of his letter is devoted to the contention that the disciplinary powers with regard to solicitors ought only to be exercised in cases of technical professional misconduct. With regard to the first point, his suggestion is that the section in question, which provides that where a person, against whom a complaint in respect of an assault has been preferred "by or on behalf of the party aggrieved," shall, after having been convicted, have paid the fine imposed, or suffered the imprisonment awarded, he shall be released from "all further or other proceedings, civil or criminal, from the same cause". There is nothing in any of the reports of the case in question to which we have had access to indicate whether or not this section was brought to the attention either of the Committee or of the Court, but whether this was done or no, we cannot think that it would have made any difference to the result, for it seems to be plain that the section refers to further proceedings on the part of the "person aggrieved".

It is quite obvious that there might be cases in which assaults by professional men would constitute very grave "professional misconduct," and it can hardly be seriously suggested that the section in question was intended to do more than to relieve a defendant in an assault case from being sued civilly, or further prosecuted criminally, by the victim of the assault.

—*The Law Journal*, September 18, 1926, p. 181.

"Professional Misconduct".—As to the second part of the letter in question, it is surprising to find a gentleman who states that he has been in practice for over half a century suggesting that "it has been generally understood that only cases of professional misconduct are considered by the Law Society". The law on this point has been settled ever since the case of *Re Weare*, 1893, 2 Q. B. 439, was decided by a full Court of Appeal, consisting of Lord Esher, M. R., Lindley and Lopes, L. JJ. It was there perfectly clearly and definitely laid down that a solicitor may be struck off the rolls, or otherwise punished, for an offence which has no relation to his character as a solicitor. Indeed, as appears from Lord Esher's judgment, the point had been decided so long ago as 1778, when Lord Mansfield, in *Re Brownsall*; 2 Cowp. 829; said that the fact that an attorney had been convicted of, and punished for, an offence not connected with his professional character, was liable to be struck off the roll in respect of that conduct. So far as the merits of the case which gave rise to our correspondent's letter are concerned, we are quite satisfied that the view of the profession as a whole is that the Statutory Committee took, to use the words of the Master of the Rolls, a right, and perhaps even a lenient, view of the appellant's conduct. So far as our correspondent suggests that solicitors are dissatisfied with the constitution of the Statutory Committee or with the way in which it performs its difficult and unpleasant duty, we are confident that he is completely mistaken.

—*The Law Journal*, September 18, 1926, p. 182.

Murderers wrongly sentenced.—Reformers of English Criminal Jurisprudence have received a valuable ally by the entrance into the lists on their behalf of Sir Edward Marshall Hall, K. C., who has recently denounced in the Courts and in the press the retention in our law of matters which have disappeared from the law of murder in all other civilised countries. Sir Edward is the foremost advocate at the criminal bar of our generation, and has been concerned in a far greater number of criminal *causes celebres* than any other living practitioner. Moreover, he holds Conservative

opinions politically, and has never been accused or suspected of the standpoint which its opponents denounce as "Sentimentalism" or "Humanitarianism." His views are therefore entitled to the respectful consideration due to his absence of partisan bias in favour of the advanced point of view, and to his quite unique forensic experience. It was, perhaps, a red letter day in the history of criminal law reform when he contributed to the press a powerful indictment of recent practice under which, he said, murderers only technically guilty have been sent to the scaffold in opposition to all enlightened public opinion.

—*The Law Journal*, September 18, 1926, p. 183.

BOOK REVIEWS.

"TRIAL OF KATHARINE NAIRN." Edited by W. Roughhead. Notable British Trials Series. Messrs. Butterworth & Co., Ltd. Price Rs. 6-8-0.

In the volume under review, we are taken more than a century and half back to the sixties of the eighteenth century and this time to the High Court of Justiciary in Edinburgh. The trial was before a Bench of six Judges and 15 Jurors and lasted 43 consecutive hours. The interest to the layman and the ordinary reader is that the volume gives the details of yet another story of guilty love resulting in incest and shows how a young wife, not many months married, takes away the life of her husband by poison supplied by her paramour who is only her husband's younger brother. Into the details of this story, it is not our purpose to travel, but we can confidently say it is one of absorbing interest and recommend it to our readers.

The proceedings of the trial in Scotland afford very interesting reading to the lawyer. The language of Scottish law—not always very familiar to the ears of the modern lawyer—and the long indictment which opens the proceedings, and which sets out the charge and the minute details of the evidence shortly to be let in, form a strange contrast to the brief and concise charges of our Courts to-day. There is no opening of the prosecution case, and that accounts for the long indictment. Then comes the plea of "Not guilty" followed by a long address of the defence counsel on the case in general and legal objections in particular, and the *interlocutor* of the Judges on the legal objections. It was the

practice in those days that after a jury was once chosen, the Court could not be adjourned till the verdict was given and hence we see the strange spectacle of the trial lasting 43 consecutive hours. The guilty pair were found guilty of both charges—incest and murder, and then followed a strange procedure. A Plea in arrest of Judgment was raised and elaborate arguments setting forth objections to the mode and form of trial—which one expects in modern days to be raised before a Court of Appeal—and they had to be adjudicated on before sentence could be pronounced. Katharine as a last resort claimed respite on the ground of pregnancy and the matter was remitted to five skilful midwives—not twelve matrons as in England.

It is not necessary to say that the usual features of the Notable Trials Series are present—the historical narrative of facts forming an Introduction and many interesting Appendices. Appendix II sheds much light on the preparation of the Crown cases in those days, while Appendix IX gives the correspondence which passed between the Scotch Law Officers and the Secretary of State relating to this trial. We heartily recommend the volume to our readers.

"MADRAS LOCAL AND MUNICIPAL ELECTION MANUAL" printed at the M.L.J. Press, Mylapore.

We have heard more than one Judge of the Madras High Court complain, when hearing a Civil Revision Petition arising out of an Election Petition, of the absence of a handy publication containing all the rules framed by the Local Government under the various Municipal Acts. The volume under review contains all the provisions relating to elections under the Madras City Municipal Act, the Madras District Municipalities Act and the Madras Local Boards Act, and all election rules framed thereunder, as revised up to 1st October, 1926. We are sure it supplies a long-felt want and the neat get-up and printing add to its value. The volume is priced at Rs. 2.

"MADRAS MUNICIPAL ELECTION RULES" by Mr. E. S. Sunda, B. A., B. L., Vakil; Madura.

This neat little book is a companion to the author's "Law of Municipal Elections" published last year and brings up all the rules framed by the Local Government up to June, 1926. We are sure the two books together will be of great use to the public in general and the legal profession in particular.